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RECENT CASES.

AGENCY, UNDISCLOSED — SALES — CONDITIONS AGAINST RE-ENGAGING IN BUSINESS—*HAMBLÉN v. BIRCH*, 59 N. Y. Supp. 40.—Plaintiff bought out a restaurant with the understanding that the vendor would not thereafter, directly or indirectly, engage or be interested in restaurant business in that city. The business belonged to defendant's wife, Louisa L. Birch, but was conducted for her by the defendant, he signing her name, L. L. Birch, without any qualification or addition. He signed and indorsed checks in her name, and bill of sale of the business to plaintiff was so signed by him. It contains this provision, "and I further agree that I will not be connected in any way or have capital invested in any restaurant or lunch room in the city of Yonkers according to verbal agreement." *Held*, the fact that he fails to disclose his agency does not render the condition applicable to him individually.

The courts lay down the broad rule that where an agent in his dealings with third parties does not disclose his principal, he is personally liable on the contracts. This rule is supported by all authorities. 1 Amer. and Eng. Encycl. of Law, 2d ed., 1122. But in the above case the rule of law does not go to the extent to involve a separate and distinct penalty to be borne by the agent personally in addition to the one which could be enacted against the principal whenever her identity is disclosed. He can be made to pay any damages sustained by plaintiff from any breach of warranty contained in the contract, including damages resulting from carrying on the prohibited business by the principal. But the agent, because of his failure to disclose his agency, since no fraud was perpetrated by him, cannot be enjoined from entering a business prohibited only to the vendor, because if that were the case the vendee would have acquired the right to enjoin two individuals from competing with him where he intended and expected to acquire the right of enjoining one.

ASSESSMENT FOR PUBLIC IMPROVEMENTS—FORCED CONTRIBUTIONS—*CITY OF SHREVEPORT v. PRESCOTT ET AL.*, 26 So. Rep. 664 (La.).—A local assessment to pay the cost of street improvements levied under compulsion of law alone, i. e., without the knowledge or consent of the abutting proprietors, is a tax, because such assessment is predicated upon fiat of the Legislature and not upon petitions signed by abutting property owners.

The court in this case has evidently not used "tax" in the way the term is ordinarily understood. For in its ordinary meaning a tax is not an assessment, as recognized in the cases of *In re Opening of Streets*, 20 La. An. 499, and *Munson v. Atchafulaya Basin Levee District*, 43 La. An. 15. An assessment is undoubtedly a species of tax, being levied under a taxing power, and it would seem to be in this sense that the court uses it. But granted this, the reasoning is peculiar. The fact that the abutting property owners have had no say in its levy makes it a tax. We have never seen this urged before as a means of distinguishing a tax from an assessment. In the case of *Indianapolis v. Imberry*, 17 Ind. 175, they consider a levy an assessment when made for the purpose of local improvement and not petitioned for by the abutting property owners. The same view is held in the case of *Baker v. Tobins et al.*, 40 Ind. 310. In both cases the city charter allows the Common Council to make such assessment upon a two-thirds vote. We understand a better distinction to be